

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RICHARD L. CARMICHAEL,	)	CASE NO. C05-2076-RSM
	)	
Petitioner,	)	
	)	
v.	)	ORDER DENYING PETITIONER'S
	)	MOTION FOR STAY; GRANTING
E. K. MCDANIEL,	)	PETITIONER'S MOTION TO
	)	DISMISS § 2254 PETITION
Respondent.	)	
_____	)	

The Court, having reviewed petitioner's motion for stay, or in the alternative, for dismissal without prejudice of his § 2254 petition, the Report and Recommendation of the Honorable Mary Alice Theiler, United States Magistrate Judge, any objections thereto, and the remaining record, does hereby ORDER:

(1) The Court adopts the Report and Recommendation, and notes his continuing objection to the Court's construing this challenge as appropriate under 28 U.S.C. § 2254, which he expresses in his Objections;

(2) Petitioner's motion for a stay (Dkt. #9) is DENIED;

(3) Petitioner's request, in the alternative, for dismissal without prejudice, is

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01 GRANTED. Petitioner's § 2254 petition and this action are DISMISSED without  
02 prejudice; and

03 (4) The Clerk is directed to send a copy of this Order to petitioner and to Judge  
04 Theiler.

05 DATED this 19th day of May, 2006.

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09 RICARDO S. MARTINEZ  
10 UNITED STATES DISTRICT JUDGE  
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